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In The

Supreme Court of the United States

October Term, 1961

No. 357

JOHN SCHROEDER, et al., APPELLANTS

V.

HOMESTEAD CORPORATION, APPELLANT

Impleaded with,

MARGARET A. WILLIAMS, et al., APPELLEES

APPEAL FROM THE SUPREME COURT OF NEBRASKA

JURISDICTIONAL STATEMENT

JAMES A. LAKE, SR.
4600 Bryan Circle
Lincoln, Nebraska
ROY HARROP
1822 Emmet Street
Omaha, Nebraska
Counsel for Appellants.

JOE CHRISTENSEN PRINTING, 1511 O Street, Lincoln 8, Nebr.

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JURISDICTIONAL STATEMENT

Appellants appeal from a judgment of the Supreme Court of the State of Nebraska entered on March 3, 1961, re-hearing denied, April 14, 1961, affirming a judgment of the District Court of Washington County, Nebraska, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the Appeal and that substantial questions are presented.

OPINION BELOW

The decree and judgment of the District Court of Washington County is not reported but may be found in the Record at pages 166 to 172. The opinion of the Supreme Court of the State of Nebraska is reported in 171 Neb. 792, 107 N.W.2d 750 (1961). The judgment of the Supreme Court of the State of Nebraska is appended to this Statement and designated Appendix A; the opinion of the Supreme Court of the State of Nebraska is appended and designated as Appendix B.

JURISDICTION

This suit was brought in the District Court of Washington County, Nebraska under the Uniform Enforcement of Foreign Judgments Act of the State of Nebraska (Sections 25-1587 et seq., Revised Statutes of the State of Nebraska, 1943). The object of the suit was to register and enforce in the State of Nebraska a judgment and decree entered by the District Court in and for Harrison County, Iowa, on December 30, 1952. The judgment and decree of the District Court of Washington County, Nebraska was entered on April 12, 1960. A notice of Appeal to the Supreme Court of the State of Nebraska was filed on June 6, 1960. The judgment of the Supreme Court of the State of Nebraska, affirming the judgment of the District Court of Washington County, was entered on March 3, 1961. The Supreme Court of the State of Nebraska denied a Motion for Rehearing on April 14, 1961. The Notice of Appeal was filed in the Supreme Court of the State of Nebraska on July 3, 1961.

The jurisdiction of this Court to review this decision by Appeal is conferred by Title 28, United States Code, Section 1257 (2). The following decisions sustain the

jurisdiction of the Supreme Court of the United States to review the judgment on appeal in this case. *Williams* v. *Bruffy*, 96 U.S. 176 (1877); *Largent* v. *Texas*, 318 U.S. 418 (1943); *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282 (1921); *Rogers* v. *Alabama*, 192 U.S. 226 (1904); *Brinkerhoff-Faris Trust Co.* v. *Hill*, 281 U.S. 673 (1930); *Herndon* v. *Georgia*, 295 U.S. 441 1935); *Whitaker* v. *McBride*, 25 S. Ct. 430, 531, 197 U.S. 510, 49 L. Ed. 857; *Sanders* v. *Shaw*, 244 U.S. 317-320; *Home Telephone Co.* v. *Los Angeles*, 227 U.S. 228; *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441; *Postal Telegraph Co.* v. *Newport*, 247 U.S. 464, 475-6.

QUESTIONS PRESENTED

May the District Court of Washington County, Nebraska, and the Supreme Court of the State of Nebraska, refuse to register and enforce a judgment rendered by the District Court in and for Harrison County, Iowa? Did the District Court of Washington County, Nebraska, have jurisdiction on Iowa land involved in this action so as to enable it to render a valid judgment? Did the District Court of Washington County, Nebraska, and the Supreme Court of the State of Nebraska, recognize and enforce rights guaranteed by the Iowa-Nebraska Boundary Compact of 1943?

STATUTES INVOLVED

Title 28, Section 1738, United States Code; Sections 25-1587 to 25-15,104, Revised Statutes of the State of Nebraska, 1943; Chapter 130 of the Laws of Nebraska (1943); Chapter 330, United States Statutes at Large (1943); Section 22-194 of the Revised Statutes of the State of Nebraska, 1943. The relevant portions of these statutes are appended as Appendix C.

STATEMENT OF THE CASE

When Iowa and Nebraska were admitted to the Union the boundary between the states was settled as the middle of the main channel of the Missouri River. See 9 Stat. C. LXXXII, § 1; 13 Stat. C. LIX, § 2; *Nebraska* v. *Iowa*, 143 U.S. 359 (1891). The meander line of the east bank of the river was established by United States surveyors in 1851; United States surveyors meandered the west bank in 1856.

In 1943, the United States Corps of Engineers stabilized the Missouri River at a point in Harrison County, Iowa. The map on page 28 of the Record shows the location of the River's meander line of 1851, and the 1943 stabilized channel. The stabilized channel was a considerable distance east of the 1851 meander line. Between the 1851 meander line and the stabilized channel lies a large area of land. This litigation involves title to a great part of the land lying between the 1851 meander line and the 1943 stabilized channel. Title to approximately 3000 acres of fertile farm land is involved, which conservatively valued would approximate $600,000.

On June 12, 1936, Calamus Co-operative Corporation executed a mortgage upon a large area of land which lies between the 1851 meander line and the 1943 stabilized channel. The mortgagee was the Homestead Corporation, one of the appellants. The mortgage was recorded in the proper office of Harrison County, Iowa. Upon the mortgagor's default, the Homestead Corporation commenced a foreclosure action in the United States District Court, Southern District of Iowa, Western Division. On October 6, 1937, Judge Chas. A. Dewey entered a decree of foreclosure, ordering the property sold and the mortgagor's equity of redemp-

tion barred. On December 14, 1937, the mortgaged property was sold to the Homestead Corporation for $13,590.07, and the sale was confirmed by order of the United States District Court, January 26, 1938. The confirmation order provided that if redemption was not made within one year from December 14, 1937, the United States Marshall should execute a deed conveying title to the purchaser, Homestead Corporation.

On the 21st day of December, 1938, George E. Miller, Marshall for the Southern District of Iowa, executed a deed in favor of the Homestead Corporation. With the exception of a few acres in the northeastern part of Sec. 17, Township 79 N., R. 45 W. of the 5th P.M., all the land conveyed was between the 1851 meander line and the 1943 stabilized channel. This deed was recorded in the proper Harrison County, Iowa office on December 27, 1938.

For many years, extending into the 1950's Harrison County, Iowa, levied taxes upon lands located between the 1851 meander line and the 1943 stabilized channel. Record page 121. In the 1930's and 1940's taxes on some of this land became delinquent. More specifically taxes for the below-named years became delinquent on the below-described lands (all in Township 79 N., Range 45 W. of the 5th P.M., Harrison County, Iowa):

	Tax Years	Land
Group 1	1934, 1935 and 1936	SE ¼ and Government Lots 3 and 4, Section 7.
Group 2	1935, 1936 and 1937	N ½ of the NE ¼, Section 7
Group 3	1942, 1943 and 1944	Government Lots 1 and 2 and the NE ¼ of the NE ¼, Section 19.
		NW ¼ and W ½ of the NE ¼, Section 20.

All of these tax delinquent lands were located between the 1851 meander line and the stabilized channel of 1943. (See the Map on page 28 of the Record). Pursuant to the laws of the State of Iowa, the lands listed above as "Group 1" were sold for taxes on January 3, 1938, by the County Treasurer of Harrison County, Iowa. Lands designated above as "Group 2" were likewise sold for taxes on February 6, 1939. Lands designated as "Group 3" were sold for taxes on December 3, 1945.

In all three instances the County of Harrison bid in the property, all in accordance with Iowa law. Thereafter, Harrison County, Iowa, assigned the certificates of sale, and all rights possessed by the county, to John Schroeder, one of the appellants in this case. The certificates of sale for the lands designated above as "Group 1" and "Group 2" were assigned on August 17, 1945; "Group 3" on August 8, 1946.

On April 17, 1946, the County Treasurer of Harrison County, Iowa, executed deeds conveying to John Schroeder, appellant herein, title to the lands designated above as "Group 1" and "Group 2"; on March 21, 1947, the County Treasurer of Harrison County, Iowa, likewise deeded to John Schroeder the lands designated above as "Group 3." The three deeds covering the three above-described groups were recorded in Harrison County, Iowa, on April 17, 1946 ("Group 1" and "Group 2"); and March 25, 1947 ("Group 3"). By an inter vivos conveyance appellant John Schroeder conveyed to appellant Roy Harrop an undivided one-half interest in certain of the lands which were the subject of the afore-mentioned tax sales. The exact description of the lands conveyed to appellant Harrop

is immaterial to an understanding of the issues raised by this appeal.

On May 17, 1946, John Schroeder commenced an action in equity (No. 18376) in the District Court of Iowa in and for Harrison County. Parties defendant were the Homestead Corporation, Margaret A. Williams (one of the present appellees), the County Treasurer of Harrison County, Iowa, and all unknown persons claiming any interest in described lands located in section 7 (lying between the 1851 meander line and the 1943 stabilized channel). John Schroeder, alleging that he was the owner of the described lands by virtue of the afore-mentioned tax deeds, prayed that his title be quieted, that all adverse claimants be enjoined from interfering with his title or possession; that his title be cleared and that a writ of possession issue to place him in possession. On June 5, 1946, W. W. Freeland intervened, entered his appearance and answered the petition. He denied all allegations of the petition and claimed ownership of the described lands. Margaret Williams, appellee herein, was personally served on June 17, 1946, at Clay Township, Harrison County, Iowa. On July 26, 1946, W. W. Freeland filed a pleading objecting to interrogations submitted to him by appellant John Schroeder. On November 30, 1946, W. W. Freeland, intervener, filed an amended answer asking that the plaintiff's action be dismissed, alleging the Iowa District Court was ". . . . without jurisdiction of the subject matter of this action for the reason that the real estate described in plaintiff's petition as a matter of fact is situated in the State of Nebraska."

On December 5, 1946, the District Court in and for Harrison County, Iowa, issued its decree and judgment.

The court found that it had jurisdiction of the parties and the subject matter and decreed that John Schroeder was the absolute owner of the described lands (the lands were those designated above as "Group 1" and "Group 2"). It decreed that John Schroeder was entitled to sole possession of the described real estate, quieted his title and enjoined all defendants to the action, known and unknown, from claiming any interest in the lands adverse to John Schroeder. A writ of possession was issued and the Sheriff of Harrison County, Iowa, placed John Schroeder in possession.

On December 9, 1952, John Schroeder and Roy Harrop, appellants in this appeal, as co-owners of described lands lying between the 1851 meander line and the 1943 stabilized channel, filed a Petition for for Supplemental Relief based on a Declaratory Judgment in the District Court of Iowa in and for Harrison, County. This petition was filed in the same equity action (No. 18376) that appellant John Schroeder had commenced May 17, 1946. The petition alleged that the procedure (asking for a declaratory judgment in the same action) was proper under Iowa law; that notwithstanding the decree of the court (dated December 5, 1946) persons who were parties to the action, their agents, and persons claiming under them were contemptuously interferring with John Schroeder's and Roy Harrop's peaceful possession of their lands. The petition prayed the Iowa Court to decree that John Schroeder and Roy Harrop owned the described lands, to place them in possession, and to enjoin all from interferring with Schroeder's and Harrop's possession and ownership. Margaret Williams, an appellee in this appeal, filed a Motion to Dismiss (December 18, 1952) arguing that all matters had been concluded in the decree of December 5, 1946, and that the appel-

lants (John Schroeder, Roy Harrop and Homestead Corporation) could not ask for a declaratory judgment in the original action but instead must commence a new proceeding. Appellee Margaret Williams also alleged in her Motion to Dismiss that the Iowa court was without jurisdiction since the ". . . land involved in said action and in the present attempted action is . . . now located in the State of Nebraska . . . ." Margaret Williams was served on December 10, 1952, at Herman, Washington County, Nebraska; W. W. Freeland was served December 10, 1952, at Blair, Washington County, Nebraska. Record page 20.

On December 30, 1952, the District Court in and for Harrison County, Iowa, rendered a Judgment and Decree of Supplemental Relief based on Declaratory Judgment. The court decreed that the proceeding was proper under Iowa law and that the court had ". . . jurisdiction of the parties and of the subject matter." Record page 15. The court decreed that John Schroeder, Roy Harrop and the Homestead Corporation were the owners of specifically described property. With the exception of a small part of the NE ¼ of Section 17 all of the land described in the decree was located between the 1851 meander line and the stabilized channel of 1943. The exact description of the land is immaterial to an understanding of the issues on this appeal. The descriptions are contained in the decree at page 15 of the Record and may be located on the map on page 28 of the Record. The court further decreed that W. W. Freeland and anyone claiming under or through him should be enjoined from mollesting the owners of the described property.

On September 2, 1955, John Schroeder and Roy Harrop filed a petition in the District Court of Wash-

ington County, Nebraska, naming as defendants, the Homestead Corporation, Margaret A. Williams, the County Treasurer of Harrison County, Iowa, and as an intervener, W. W. Freeland. The object of the petition was to register the December 30, 1952, Decree and Judgment of Supplemental Relief based on Declaratory Judgment entered by the District Court in and for Harrison County, Iowa. The petition was based upon Nebraska's Uniform Enforcement of Foreign Judgments Act, Sections 25-1587 to 25-15,104, Revised Statutes of Nebraska, 1943. This act provides, in part, as follows:

> Section 25-1587. Terms, defined. As used in sections 25-1587 to 25-15,104:
>
> (1) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.
>
> . . . .
>
> Section 25-1588. Registration of Judgment. On application made within the time allowed for bringing an action on a foreign judgment in this state, any person entitled to bring such action may have a foreign judgment registered in any court of this state having jurisdiction of such an action.
>
> . . . .
>
> Section 25-1594. Defenses. Any defense, set-off or counterclaim, which under the law of this state may be asserted by the defendant in an action on a foreign judgment may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within thirty days after personal jurisdiction is acquired over him. . . .

A duly authenticated copy of the Iowa decree of December 30, 1952, was attached to the petition. Record

page 14, and Exh. 12 of Bill of Exceptions, Sup. Ct. of Nebraska.

On January 6, 1955, appellants John Schroeder and Roy Harrop applied to the District Court of Washington County, Nebraska, for a writ of scire facias for execution on the Iowa judgment. This application also alleged that the land titles of John Schroeder, Roy Harrop and the Homestead Corporation were entitled to recognition in Nebraska under the provisions of the Iowa-Nebraska Boundary Compact of 1943. This compact established as the boundary between Nebraska and Iowa the center line of the stabilized Corps of Engineers' channel—the river course that heretofore has been referred to as the 1943 stabilized channel. The Compact further provided:

> Sec. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.
>
> Sec. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.
>
> Nebraska Laws 1943, C. 130, page 434.

Iowa passed legislation word for word like the Nebraska act, with the exception that the word "Iowa" was substituted for the word "Nebraska" whenever necessary to accord with the fact that it was the Iowa legislature acting. See Iowa Laws, 1943, C. 306, page 401. The United States Congress approved the compact on July 12, 1943. See 57 Stat. C. 220, page 494.

Notices to Show Cause why the Application for a Writ of Scire Facias should not issue were served upon

all of the appellees to this appeal. Record pages 33, 139. Appellees Ned and Irma Tyson filed a Motion to Dismiss the Application for a Writ of Scire Facias and the District Court for Washington County sustained the motion. This action was held erroneous by the Supreme Court of Nebraska in an opinion dated, June 29, 1956, 163 Neb. 43, 77 N.W.2d 678 (1956). No federal question was decided by the Nebraska Supreme Court in this opinion. The Nebraska Supreme Court judgment remanded the case for further proceedings.

All appellees filed answers to the Application for a Writ of Scire Facias contending that the December 30, 1952, judgment of the District Court in and for Harrison County, Iowa, was not entitled to registration or recognition in the State of Nebraska, arguing that the judgment was entered by a court lacking jurisdiction and thus void. Record page 46 (Cady Answer); page 51 (Williams Answer); page 56 (Byland Answer); page 62 (Freeland Answer); page 69 (Tyson Answer); page 128 (Bylund's Amended Answer). Demurrers to these Answers were interposed. Record pages 73-82. The demurrers were overruled. Record pages 82-3. A reply was filed alleging that the Iowa court which rendered the December 30, 1952, judgment had jurisdiction of the defendants and the subject matter and that no collateral attack upon the judgment should be permitted. Record page 85. Judgment was entitled to full faith and credit under Art. IV, Sec. 1, U. S. Constitution, and Iowa-Nebraska Boundary Compact of 1943.

Appellants filed Motions for Summary Judgment and for Judgment on the Pleadings. Record page 96; page 102. The court took this motion under advisement. Record page 123-4. After a trial of over 3 years dur-

ation the District Court of Washington County, Nebraska, rendered a Decree and Judgment holding generally for the appellees and against the appellants John Schroeder, Roy Harrop and Homestead Corporation. Record pages 166 to 172. The court overruled appellants' demurrers and denied their Motion for Summary Judgment and for Judgment on the Pleadings. The decree refused to recognize any rights guaranteed to appellants by the Iowa-Nebraska Boundary Compact of 1943. Record page 168. The decree refused to give full faith and credit to the December 30, 1952, Judgment and Decree of the District Court in and for Harrison County, Iowa. The decree denied the Iowa decree registration in Nebraska. Record page 169. The appellants' Application for a Writ of Scire Facias was denied. Finally, the decree quieted title to the land under a Nebraska Title in the appellees, and decreed that none of the appellants had any claim, title or interest in the land lying between the 1851, Iowa line, and the 1943 stabilized channel of the Missouri River under the Iowa-Nebraska Boundary Compact of 1943.

The District Court for Washington County, Nebraska, overruled appellants' Motion for a New Trial. Record page 176.

On June 6, 1960, appellants filed a Notice of Appeal to the Supreme Court of Nebraska. Record page 3. On the same day appellants filed a Praecipe for Bill of Exceptions (under Nebraska practice the Bill of Exceptions contains the evidence and exhibits introduced at the trial). Record pages 5 and 6. The Praecipe was served on counsel for the appellees on June 2, 1960. Record page 6. The Bill of Exceptions prepared according to the Praecipe was filed in the Su-

preme Court of Nebraska on October 4, 1960. On October 28, 1960, the appellees moved the Supreme Court of Nebraska to strike the Bill of Exceptions. Record page 189. This motion was sustained on November 10, 1960. Record page 209. Briefs were then filed by both appellants and appellees, and oral argument had. The Nebraska Supreme Court affirmed the judgment of the District Court for Washington County on March 3, 1961. Record page 210. A motion for rehearing was filed on March 22, 1961 (Record page 218); a motion to reverse, vacate and set aside the judgment of the Nebraska Supreme Court was filed on April 7, 1961 (Record page 220). The motion for rehearing was denied on April 14, 1961 (Record page 22). The notice of appeal to the Supreme Court of the United States followed. Record page 235.

STAGES IN THE PROCEEDINGS AND MANNER IN WHICH FEDERAL QUESTIONS WERE RAISED

Appellants have contended throughout this proceeding that the Decree of the District Court in and for Harrison County, Iowa is entitled to recognition and enforcement in the courts of the sister state, Nebraska. Appellants have based their argument on this point on the full faith and credit clause of the United States Constitution. Article IV, Section 1. In their Reply to the answers of appellees filed in the District Court for Washington County, appellants contended that the Iowa judgment was entitled to full faith and credit. Record pages 85 ff. Appellants raised the same contention in a Motion for Judgment on the Pleadings and for Summary Judgment. Record pages 96 to 98. The same point was raised by appellants in their Amended

Motion for Judgment on the Pleadings and for Summary Judgment. Record pages 102 to 106. The point was argued at length in appellants' Affidavit in Support of Motion for Judgment on the Pleadings and for Summary Judgment. Record page 109, at 116, 120. Appellants raised the point in two Motions for New Trials. See Record page 139 at 140 (point 6), at 142 (points 15, 16), at p. 146 (point 28); Record page 155 at 158 (points 15, 17, 18), at 162 (point 28). Appellants raised the full faith and credit contention in a Motion to Set Aside and Vacate or in the Alternative for a New Trial. Record page 173 at 174 (points 4 and 5).

The full faith and credit contention was argued fully in the briefs and oral argument before the Nebraska Supreme Court, and the point was raised in the Petition for Rehearing (Record p. 218); in the Motion to Reverse, Vacate and Set Aside the Nebraska Supreme Court's judgment (Record page 220 ff.); and in the Motion for Recall of Mandate. Record page 224. At all stages whenever the point was raised the ruling, decrees and judgments of both the District Court of Washington County and the Supreme Court of the State of Nebraska have been to the effect that the Nebraska Uniform Enforcement of Foreign Judgments Act should be construed to deny recognition and enforcement to the Decree of the District Court in and for Harrison County, Iowa. It is the appellants' contention that the Nebraska Uniform Enforcement of Foreign Judgments Act as so construed conflicts with Article IV, § 1 of the Constitution of the United States and with 28 U.S.C. § 1738.

Throughout all stages of the case appellants have contended that the Uniform Enforcement of Foreign

Judgments Act of the State of Nebraska has been construed to deny to Appellants right guaranteed to them by the terms of the Iowa-Nebraska Boundary Compact of 1943 and that the afore-mentioned state statute as construed is in conflict with the Due Process Clause of the United States Constitution (Article XIV, § 1) and with the Act of the Congress of the United States which approved and consented to the Boundary Compact. 57 Stat. C. 220, p. 494. It has also been appellants' contention throughout the proceedings that the Nebraska courts' construction of the Nebraska statute agreeing to the Boundary Compact (Neb. Laws, 1943, C. 130) conflicts with the Act of Congress approving and consenting to the Compact and with Article IV, § 1 and Article XIV, § 1 of the Constitution of the United States.

These contentions were raised at the following stages. Appellant's Petition for a Writ of Scire Facias contended that the decree of the Harrison County, Iowa court was entitled to recognition in Nebraska by virtue of the provisions of the Iowa-Nebraska Boundary Compact of 1943; and that the decree of the Iowa court established a title that was good in Iowa and entitled to full faith and credit in Nebraska, ("Sec. 3. Titles . . . good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska . . ." Iowa-Nebraska Boundary Compact, Neb. Laws 1943, C. 130). The issue was raised by the appellants' reply (Record pages 85, 88). It was next raised in appellants' Motion for Judgment on the Pleadings and for Summary Judgment (Record page 97); in the Amended Motion for Judgment on the Pleadings and for Summary Judgment (Record page 103); in the Affidavit in Support of the Motion for Judgment on the Pleadings and for

Summary Judgment (Record pages 115 to 121); in the Resistance to a Motion to Dismiss (Record page 135); in the several Motions for New Trials (Record pages 140, 142, 143, 156, 158, 159, 163, 174). The contention was pressed in briefs filed in the Nebraska Supreme Court and in oral argument. It was pressed again in the Motion for Rehearing (Record page 218); in the Motions to Reverse, Vacate and Set Aside Judgment and to Recall Mandate and Affidavit in Support of these motions (Record pages 220, 224, and 227).

Appellants' also contended that the District Court of Washington County, Nebraska was without jurisdiction to quiet title to the disputed land in the appellees. Appellants' contention in this regard was based upon the restrictive provisions of Art. 1, Sec. 30, Constitution of Iowa, Article IX, Sec. 2, Constitution of Nebraska, and Section 22-194 of the Revised Statutes of Nebraska, 1943 which reads:

> Where any county is bounded by the middle of the channel of any stream or watercourse, and by reason of any change of such channel any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or watercourse shall, for all county and state purposes, be deemed the channel thereof.

The land whose title the District Court of Washington County quieted in appellees was outside the boundaries of Washington County under the above-quoted provisions and the court was without jurisdiction to adjudicate title to the land. In holding that the statutes of Nebraska give power to the Washington County court to adjudicate title to land outside the boundaries of the county, the Nebraska courts deprived appellants

of Iowa property without due process of law contrary to the provisions of Article XIV, § 1 of the United States Constitution. This point was raised by appellants in their Motion for a New Trial (Record, page 141). See Title 43, U.S.C., Sec. 751.

Appellants have specified with detail the procedure and the issues in this case because of the realization that the opinion rendered by the Supreme Court of the State of Nebraska in this case is not helpful in understanding the federal questions which were placed before that court for decision. The federal issues described above were properly placed before the Nebraska Supreme Court for decision; they were necessary to a determination of the case; and there is no adequate non-federal ground to support the decision against appellants. "Under those circumstances, the refusal to pass upon the federal question is just as reviewable as an express decision on the point." Stern and Gressman, Supreme Court Practice p. 85 (2d Ed. 1954).

In 1959 the Nebraska Supreme Court promulgated new rules governing the preparation, settling and filing of Bills of Exception in civil cases. These new rules (effective September 28, 1959) were ". . . designed to remove the traps and pitfalls . . . which have plagued lawyers for years." 8 Nebraska State Bar Journal 100 (No. 3, July, 1959). The new rules were promulgated pursuant to statutory authorization. Section 25-1140, Revised Statutes of Nebraska, 1943 (1959 Cum. Supp.), as amended by Nebraska Laws, c. 104, § 1 (1959), provided:

> The procedure for preparation, settlement, signature, allowance, certification, filing, and amendment of the bill of exceptions shall be regulated

and governed by rules of practice prescribed by the Supreme Court.

Pursuant to this delegation of authority the Supreme Court of Nebraska promulgated Rule 7 (c) and (d) which is as follows:

> c. *How Ordered.* The party appealing may order a bill of exceptions by filing in the office of the clerk of the district court a praecipe therefor within the time allowed for filing a notice of appeal. Unless otherwise specified therein, a praecipe requires that all of the evidence offered at the trial and all of the evidence offered at any hearing on any matter and the rulings thereon be included in the bill of exceptions. Appellant may in the alternative specify in the praecipe that less than all of such evidence be included in the bill of exceptions; however, the bill of exceptions shall be so prepared only if the written consent of all other parties be endorsed on or attached to such praecipe. The clerk of the district court shall forthwith deliver a copy of the praecipe, with attachments and endorsements thereon, to the court reporter and a copy to the Clerk of the Supreme Court.
>
> d. *Preparation and Delivery by Reporter.* Within two months after the filing of appellant's praecipe, the court reporter shall deliver to the clerk of the district court a bill of exceptions as requested in the praecipe and prepared in accordance with rules 7a and 7b. The bill of exceptions shall be certified by the court reporter as being correct and complete in accordance with the praecipe. Upon receipt of the bill of exceptions from the court reporter the clerk of the district court shall forthwith file it and notify all parties or their attorneys of record and the Clerk of the Supreme Court of the date of such filing. When filed with the clerk of the district court, such bill of excep-

tions becomes the official bill of exceptions in the case.

On June 6, 1960, appellants filed a Praecipe for a Bill of Exceptions in this case. Record page 178. Appellants designated only parts of the evidence and exhibits to be included in the Bill of Exceptions. The Praecipe was served on the Appellees on June 2, 1960. Record page 180. Appellees remained silent after this service. The Clerk of the court and the official court reporter then prepared the Bill of Exceptions in accordance with the designation in the Praecipe. The Bill as so prepared was filed in the Supreme Court of the State of Nebraska on November 4, 1960. Appellees then filed a motion to strike the bill of exceptions upon the ground that it did not contain all of the evidence and exhibits in the case. Record page 189. This motion was granted over appellants' objections. Record page 209.

It is appellants' contention that the action of the Nebraska Supreme Court in construing its rules in this manner deprived appellants of their property without due process of law contrary to Article XIV, Section 1 of the United States Constitution. At a late stage of the proceeding appellants were taken by surprise by this interpretation of Rule 7 of the Supreme Court of Nebraska and appellants were denied equal protection of the law and the right to a judicial review of the evidence and exhibits supporting their case in the Bill of Exceptions.

Appellants raised this contention in an Affidavit in Resistance to Motion to Strike the Bill of Exceptions of Appellants, Record page 203, at p. 207. It was raised in appellants' Motion for Rehearing and Brief on Rehearing (Record page 210, page 30 of the Brief,

Par. 3). It was raised in appellants' Motion to Reverse, Vacate and Set Aside Judgment and Decree (Record pages 220-1, Par. 8 and 9); in appellants' Motion for Recall of the Mandate (Record page 224, Par. 2 to 5); and in appellants' Affidavit in Support of the Motion to Reverse, Vacate and Set Aside the Judgment and Decree (Filed May 15, 1961, Record page 227, Par. 1).

THE FEDERAL QUESTIONS ARE SUBSTANTIAL

The failure and refusal of the Nebraska court to give full faith and credit to the Iowa court's judgment of December 30, 1952 is in direct conflict with past decisions of the Supreme Court of the United States. The Iowa court's decree affected title to lands. The Iowa court found that it had jurisdiction over these lands by finding specifically that it had jurisdiction over the subject matter of the law suit. Appellee Margaret Williams appeared in the Iowa action and filed a Motion to Dismiss in which she denied that the Iowa court had jurisdiction over the subject matter. Appellee Margaret Williams contended in her Motion to Dismiss that the lands were located in Nebraska and that therefore the Iowa court was without jurisdiction to adjudicate matters of title pertaining to them. By denying that the Iowa court had jurisdiction over the land, Margaret Williams raised, and thereafter had full opportunity to litigate, the question of the location of the land. In short she had her day in court to present evidence concerning location of the land. Having appeared in the Iowa action with full opportunity to contend that the Iowa court lacked jurisdiction, and to present her evidence on that point, she became bound by the court's finding that it had jurisdiction over the subject matter and power to quiet title in the appel-

lants. The matter of jurisdiction of the Iowa court became res adjudicata as to Margaret Williams.

The decision of the Nebraska court refusing to hold that the Iowa judgment bound appellee Margaret Williams and to give full faith and credit to the Iowa decree is in conflict with the following decisions of the United States Supreme Court. *Baldwin* v. *Iowa State Traveling Men's Association*, 283 U. S. 522 (1931); *Chicago Life Insurance Co.* v. *Cherry*, 244 U. S. 25 (1917); *Trienies* v. *Sunshine Mining Co.*, 308 U. S. 66 (1939); *Stoll* v. *Gottlieb*, 305 U. S. 165 ( ); *Roche* v. *McDonald*, 275 U. S. 449 ( ); *Chicot County Drainage District* v. *Baxter State Bank*, 308 U. S. 371 (1940).

By failing to give full faith and credit to the Iowa decree the Nebraska court decided a federal question contrary to the above decisions of the Supreme Court of the United States and contrary to Article IV, § 1 of the United States Constitution.

The proceeding in the Iowa court which culminated in the decree and judgment of December 30, 1952, was a continuation of a lawsuit that was commenced on May 17, 1946. W. W. Freeland voluntarily intervened in the action that was commenced on May 17, 1946. W. W. Freeland entered an appearance and answered that petition. In his answer he claimed ownership of the land involved, and he also denied that the Iowa court had jurisdiction over the land which was the subject matter of the action. W. W. Freeland asked that the Iowa court dismiss the action for want of jurisdiction over the land. The Iowa court refused to do so and found specifically that it had jurisdiction. By appearing and putting in issue the question of subject

matter jurisdiction, and with a subsequent full opportunity to litigate that issue, W. W. Freeland became bound by principles of res adjudicata, and the Iowa judgment became entitled to full faith and credit in Nebraska under the decisions of the Supreme Court cited above. The jurisdiction of the Iowa court over W. W. Freeland continued down to the entrance of the December 30, 1952 Decree. See *Michigan Trust Co.* v. *Ferry*, 228 U. S. 346 (1913).

Appellee Cady and his wife (also an appellee) claim title through W. W. Freeland. See Answer, Record page 43 at 44, and see Deed from W. W. Freeland to appellee Cady, at page 92 of the Record. Appellees Ned Tyson and Irma Tyson claim title through W. W. Freeland. See the Deed from W. W. Freeland to Ned and Irma Tyson, Record page 90. These deeds were executed in 1953 and 1954 subsequent to the decree of the Iowa court dated, December 30, 1952. An important question under the full faith and credit clause is presented as to whether that clause requires Nebraska to give full faith and credit to the Iowa decree as it affects grantees of W. W. Freeland who was bound by the Iowa decree as was Earl Bylund and Flossie Bylund; Appellants contend that this is an important question of federal constitutional law which has not been, but should be, settled by decision of the Supreme Court of the United States.

The question of the proper construction and meaning of the language of the Iowa-Nebraska Boundary Compact of 1943, and whether as construed by the Nebraska courts in this case, it conflicts with the full faith and credit and due process clauses of the United States Constitution and with the act of the Federal Congress in approving the compact are important and

substantial questions. To the appellants in this case they are important because over one-half million dollars of real estate are involved. More important though for purposes of the United States Supreme Court, these same questions carry the key to many land title disputes involving thousands of acres of land lying along the Missouri River between Iowa and Nebraska.

As this Court knows from past litigation (see *Nebraska* v. *Iowa*, 143 U.S. 359 [1892]), the Missouri River is constantly changing its course and in some instances the consequence is that the physical location of farms shift from one side of the river to the other. The 1943 Iowa-Nebraska Boundary Compact was an effort by the two states to settle the boundary. That compact established the boundary between the two states for almost the entire distance that the two states meet. Thus, thousand of acres bordering the river in both states are affected by the correct interpretation of the Compact. Efforts of the two states during 1960 and 1961 to agree upon a new Compact failed. The 1943 Compact is, therefore, the present existing legal instrument defining the boundary and the rights of property owners whose lands are shifted to the other side of the river because of natural or man-engineered forces.

During the 1961 session of the Nebraska Legislature, a resolution (Resolution 38, Nebraska Legislature, 1961) recited that since many persons in Nebraska ". . . may be called upon to defend the title to lands along the Missouri River . . ." the state surveyor was directed to make surveys that would be ". . . necessary or helpful in protecting the interests of this state or the citi-

zens thereof from the direct or indirect claims of other states to lands along the Missouri River . . ." Work has now begun under this resolution—work which will take ten years to complete. It is estimated by Nebraska State Surveyor Willis Brown that at the present time the river has shifted as much as three or four miles in places. The State Surveyor reported to the Nebraska Board of Educational Lands and Funds on August 14, 1961, that there are thirteen trouble spots along the river that have caused disputes over land titles. See Omaha World Herald, Tuesday, August 15, 1961, p. 4, col. 1; Nebraska State Journal, Tuesday, August 15, 1961, p. 20, col. 1. This instant case is one place where trouble and disputes have arisen.

A decision in this case will, therefore, be of immense assistance in settling these thirteen disputes, and the many more that most certainly will arise in the future along the Iowa-Nebraska boundary.

Appellants contend that a deed issued by a United States Marshall in 1938 pursuant to Iowa federal court mortgage foreclosure action, and tax deeds issued by an Iowa taxing authority for taxes levied long before the effective date of the 1943 Iowa-Nebraska Boundary Compact are titles which must be recognized by Nebraska under the language of the Compact: "Titles . . . good in Iowa shall be good in Nebraska . . ." (Section 3, Iowa-Nebraska Boundary Compact, 1943).

In this case the Nebraska court also held that the District Court of Washington County had jurisdiction over the land so that it could adjudicate title to that land without violating the due process clause of the United States Constitution. In construing the powers

of the Washington County court in this manner the Nebraska court decided a case in conflict with *Thompson* v. *Whitman*, 18 Wall. 457 (U.S. 1874). By virtue of Section 22-194 of the Revised Statutes of Nebraska 1943, the boundaries of Washington County did not include any of the land in controversy in this action. Accordingly, the Nebraska court was without jurisdiction over the land, and its decree deprives appellants of their property without due process of law contrary to the provisions of Article XIV, § 1 of the United States Constitution, and contrary to *Thompson* v. *Whitman*, supra.

This appeal, therefore, presents extraordinary and substantial constitutional questions which should be ruled upon by this Court.

Respectfully submitted,

JAMES A. LAKE, SR.
4600 Bryan Circle
Lincoln 8, Nebraska
ROY HARROP
1822 Emmet Street
Omaha, Nebraska
Attorneys for Appellants.

APPENDIX A.

Judgment of the Supreme Court of the State of Nebraska.

March 3, 1961

This cause coming on to be heard upon appeal from the district court of Washington county, was submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, considered, ordered and adjudged that said judgment of the district court be, and hereby is, affirmed; that appellees recover of and from appellants their costs herein expended, taxed as $; for all of which execution is hereby awarded, and that a mandate issue accordingly.

ROBERT G. SIMMONS
Chief Justice

APPENDIX B.

Opinion of the Supreme Court of the State of Nebraska.

March 3, 1961

SIMMONS, C. J.

This is an appeal from the district court for Washington County.

The notice of appeal recites that it is from decrees rendered on August 31, 1959, January 4, 1960, and April 12, 1960, and from the overruling of a motion to vacate the judgment and decree or in the alternative the overruling of a motion for a new trial. We do not find a decree of August 31, 1959, in the transcript. We do find a decree of January 4, 1960. However, this decree is shown to have been set aside by "consent of the parties" and another decree rendered April 12, 1960. It is from that decree and subsequent proceedings that the appeal is evidently taken.

The action seems to have been brought by one John Schroeder as plaintiff against Homestead Corporation, two named parties, and all persons claiming any right, title, or interest in certain described real estate "all in Harrison County, Iowa." The petition refers to one Roy M. Harrop as "co-owner," and Harrop verifies as attorney for the plaintiff. Later Harrop is carried as a plaintiff with Schroeder in the title of pleadings. The "Homestead Corporation" is carried as a defendant throughout, although in its answer referred to later herein is the recital that it is "Now American Cooperative Company, A Corporation."

We are assured in appellant's brief that this is the second appearance of this case in this court. Reference is made to Schroeder v. Homestead Corporation, 163 Neb. 43, 77 N. W. 2d 678. However we find nothing in the record before us to connect that appeal and the instant one save the similarity of names and some facts and contentions of the parties.

Schroeder, Harrop, and Homestead Corporation are recited as appellants.

On November 10, 1960, on motion of appellees the purported bill of exceptions herein was stricken by this court. That order became final. (Emphasis ours)

We here must examine the record, then, under the long-recognized rule that: In the absence of a bill of exceptions it is presumed that issues of fact presented by the pleadings are established by the evidence, that they were correctly decided, and the only issue that will be considered on appeal is the sufficiency of the pleadings to support the judgment. Brierly v. Federated Finance Co., 168 Neb. 725, 97 N. W. 2d 253.

We go then to the pleadings insofar as they relate to the decree rendered herein.

The petition was filed under the Uniform Enforcement of Foreign Judgments Act, sections 25-1587 to 25-15,104, R. R. S. 1943. The petition pleaded the existence of a judgment rendered in the district court for Harrison County, Iowa, and prayed that the judgment be registered in Washington County, Nebraska. An authenticated copy of the Iowa judgment was attached to the petition. It involved a large tract of land along the Missouri River.

Later there was filed by Schroeder and Harrop as "plaintiffs" a praecipe and application for writ of scire facias for execution on the registered judgment and decree.

A notice to show cause was issued and served on several persons. Issues were made up on that notice by parties claiming to own parts of the land in severality.

The parties so noticed answered and denied generally; several of them, with spouses, alleged ownership of the land involved by record title and adverse possession; they alleged that the land involved in the litigation had all accreted to their land throughout the years and had been in existence for more than 20 years; and some of them alleged actions to quiet title and res judicata. They further alleged that the land involved in fact existed in Washington County, Nebraska, and not in Iowa during all of the time plaintiffs were under taking to obtain possession in Iowa and that plaintiff's "foreign judgment" was void because of nonjurisdiction of the courts of Iowa over the subject matter of the action. They further alleged that the action was barred by the statute of limitations contained in Laws 1943, c. 130, § 4, p. 436, Vol. 2 A, R. R. S. 1943, appendix, page 663. Schroeder, Harrop, and Homestead Corporation replied denying generally and asserted several affirmative defenses to the allegations of the answer.

The trial court in its decree of April 12, 1960, recited that the trial proceeded for 8 separate days until "all the evidence had been presented by all of the parties"; and that the court in company with counsel had viewed the premises. It found generally against Schroeder, Harrop, and Homestead Corporation and in favor of the appellees claiming ownership. It made

several specific findings of fact in accord with its general findings.

It then decreed that the purported judgment of the district court for Harrison County, Iowa, was void. It denied registration of the judgment and the application for the writ of scire facias.

By specific reference, to parties appellees' specific lands, it held that the land was owned by the parties in fee simple, free and clear of any right, title, claim or demand of Schroeder, Harrop, and the named corporation. It cancelled any instruments of record concerning the title to the land and any rights of Schroeder, Harrop, or the corporation therein, and barred them from asserting any claim of right to possession or ownership of lands described in the decree.

Under the rule of law above announced, the judgment of the trial court is affirmed.

AFFIRMED.

APPENDIX C.

Title 28 United States Code, Section 1738.

. . .

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territories and possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Iowa-Nebraska Boundary Compact of 1943, C. 130 Neb. Laws (1943).

. . .

Sec. 2. The State of Nebraska hereby cedes to the State of Iowa and relinquishes jurisdiction over all lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa.

Sec. 3. Titles, mortgages, and other liens good in Iowa shall be good in Nebraska as to any lands Iowa may cede to Nebraska, and any pending suits or actions concerning said lands may be prosecuted to final judgment in Iowa and such judgment shall be accorded full force and effect in Nebraska.

Iowa-Nebraska Boundary Compact of 1943. C. 306 Iowa Laws (1943).

. . .

Sec. 2. The State of Iowa hereby cedes to the State of Nebraska and relinquishes jurisdiction over all lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska.

57 Stat. C. 220. p. 494 (1943).

. . .

That the approval and consent of the Congress is hereby given to the compact effected by the Legislature of the State of Iowa entitled "An Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Nebraska and to relinquish jurisdiction over lands now in Iowa but lying westerly of said boundary line and contiguous to lands in Nebraska; to provide that the provisions of this act become effective upon the enactment of a similar and reciprocal law by Nebraska and the approval of and the consent to the compact thereby effected by the Congress of the United States of America and to declare an emergency", approved April 15, 1943 (House File 437, Acts of the Fiftieth General Assembly), and a similar and reciprocal Act enacted by the State of Nebraska entitled "A bill for an Act to establish the boundary line between Iowa and Nebraska by agreement; to cede to Iowa and to relinquish jurisdiction over lands now in Nebraska but lying easterly of said boundary line and contiguous to lands in Iowa; to provide that the provisions of this Act shall become effective upon the approval of and the consent of the Congress of the United States of America to the compact effected by

this Act and House File 437 of the 1943 Session of the Iowa Legislature; to repeal Chapter 121, Session Laws of Nebraska, 1941; and to declare an emergency", approved May 7, 1943 (Legislative Bill 438, Fifty-sixth session of the Nebraska Legislature).

Approved July 12, 1943.

Uniform Enforcement of Foreign Judgments Act of Nebraska, Sections 25-1587 to 25-15,104, Nebraska Revised Statutes, 1943.

Section 25-1587. Terms, Defined. As used in sections 25-1587 to 25-15,104:

(1) "Foreign judgment" means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.

. . .

Section 25-1588. Registration of Judgment. On application made within the time allowed for bringing an action on a foreign judgment in this state, any person entitled to bring such action may have a foreign judgment registered in any court of this state having jurisdiction of such an action.

. . .

Section 25-1594. Defenses. Any defense, set-off or counterclaim, which under the laws of this state may be asserted by the defendant in an action on a foreign judgment may be presented by appropriate pleadings and the issues raised thereby shall be tried and determined as in other civil actions. Such pleadings must be filed within thirty days after personal jurisdiction is acquired over him. . . .

Section 22-194, Revised Statutes of the State of Nebraska, 1943.

22-194. Boundary Streams; change in channel; old channel governs. Where any county is bounded by the middle of any stream or watercourse, and by reason of any change of such channel any island or tract of land shall be thrown to the other side of such bounding channel, after the original organization and establishment of the boundaries of any county, the old channel of the stream or watercourse shall, for all county and state purposes, be deemed the channel thereof.

Article IV, § 1, United States Constitution.

Full faith and credit shall be given in each state to the Public Acts, Records, and Judicial Proceedings of every other State.

Article XIV, § 1, United States Constitution.

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.